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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

KRISTINA J.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D048893

(Super. Ct. No. SJ11529)

Proceedings for extraordinary relief after reference to a Welfare and Institutions
Code section 366.26 hearing. William E. Lehnhardt, Judge. (Retired Judge of the
Imperial Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)
Petition denied.

Kristina J. seeks writ review of orders terminating reunification services regarding her child, Isaiah J., and referring the matter to a Welfare and Institutions Code section 366.26 hearing.¹ She contends she made substantive progress with the provisions of her case plan and she was not provided with reasonable reunification services. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On September 16, 2005, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of five-month-old Isaiah under section 300, subdivision (b), alleging he was at risk of harm because Kristina left him with his maternal grandmother (the grandmother) for three weeks without providing for his support and had repeatedly left him with other people. Kristina said the situation had been blown out of proportion; she left Isaiah only with friends and family members. The court ordered Isaiah detained.

The social worker made an appointment with Kristina to discuss the case, but Kristina did not appear. She attempted to contact Kristina on her cellular telephone, but the calls did not go through. The social worker initiated a parent search for her. The grandmother said Kristina was born addicted to crack cocaine and had been diagnosed with bipolar disorder, but refused to take medication. The grandmother had adopted her when Kristina was very young. When Kristina was a teenager, she lived in group homes for a time and had been in juvenile hall and in mental health facilities. The grandmother

¹ All statutory references are to the Welfare and Institutions Code.

said Kristina called to check on Isaiah about once each week and sometimes came to church on Sundays and visited with him there.

On November 14, 2005, Kristina submitted the matter on the basis of the social worker's reports. The court found the allegations of the petition true, declared Isaiah a dependent child, removed custody, and placed him with the grandmother. It ordered Kristina to participate in reunification services and authorized her to live at the grandmother's home with Isaiah. Kristina's case plan included counseling, parenting education and a psychiatric/psychological evaluation.

For the six-month review hearing, the social worker reported Kristina was not living with the grandmother because she did not want to follow the grandmother's house rules, but instead was living "on the streets" and in hotels. She occasionally visited Isaiah. The social worker said she left messages for Kristina with the grandmother and asked the grandmother to have Kristina contact her because she had obtained approval for Kristina to have a psychological evaluation. The grandmother said she had not seen Kristina for a while. The social worker said in May 2006, she learned Kristina had been staying with the grandmother off and on and had told the grandmother she completed a parenting class. The grandmother encouraged her to contact the social worker, but the social worker had not been able to reach her.

At the six-month hearing on June 21, 2006, the social worker testified she observed one visit between Kristina and Isaiah, and, during the visit, Kristina and the grandmother had a shouting match, frightening Isaiah. The grandmother said Kristina visited Isaiah sporadically and sometimes did not appear for three weeks at a time. The

social worker said the former social worker went over the case plan with Kristina and gave her referrals for therapy and parenting classes. In June, the current social worker met with Kristina and sent her a new list of referrals. She said Kristina completed a parenting class, but did not begin therapy. The social worker opined Isaiah should not be returned to Kristina because there were significant issues she needed to address in therapy, and she had not internalized what she learned in parenting classes.

Kristina testified she had moved to the grandmother's home six weeks before the hearing and before that she lived at St. Vincent de Paul Village, a winter shelter and with friends. She said she visited Isaiah at least once or twice each month. She had trouble finding a therapist because she did not have full Medi-Cal coverage. She believed she had benefited from parenting classes and since moving in with the grandmother had been trying to take care of Isaiah and put his needs ahead of her own.

The court terminated reunification services and set a section 366.26 hearing. It found Kristina had chosen not to live with the grandmother, had not spent much time with Isaiah or made substantive progress with her case plan, and there was no substantial probability Isaiah could be returned to her by the 12-month date.

Kristina petitions for review of the court's orders. (§ 366.26, subd. (l); Cal. Rules of Court, rule 38.1.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

I

Kristina contends the court erred in finding she had not made substantive progress in reunification services. She argues she completed a parenting class and attempted to begin therapy.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.'" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114, quoting *In re Biggs* (1971) 17 Cal.App.3d 337, 340.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Kristina's case plan included a psychiatric/psychological evaluation, counseling, and parenting education. The objectives of the plan were for Kristina to show an ability and willingness to have Isaiah's custody, obtain resources to meet his needs and provide a safe home, be willing to arrange appropriate childcare, meet his physical, emotional, medical and educational needs, show knowledge of appropriate behavior, comply with treatment, accept responsibility for her actions and enroll and complete vocational training.

Kristina completed a parenting class, but the fact that she engaged in a shouting match in Isaiah's presence indicates she did not internalize what she was taught. She had

not had a psychological evaluation, which was necessary to identify her needs and how to address them, and she had not begun therapy. The social worker opined Isaiah could not be returned because significant issues remained which Kristina would have to address in therapy. Also, the grandmother reported Kristina visited Isaiah only sporadically, and the record showed she had not lived in a stable home for much of the reunification period. In January 2006, the social worker was told Kristina was living on the streets and in hotels so she sent a letter to her at the grandmother's home, believing this was the best way to reach her. In February, she asked the grandmother to have Kristina contact her because she had arranged for a psychological evaluation. She also attempted to refer her to counseling services, but could not locate her.

Kristina testified she started looking for a therapist after she received the social worker's letter in June 2006, but could not find one because she lacked insurance. She did not tell the social worker of the difficulty in securing a therapist until shortly before the hearing. She testified that in January the grandmother told her the social worker was trying to find her, but she did not meet with the social worker until May. The record shows that the social worker attempted to provide services, but Kristina did not make herself available. "Reunification services are voluntary, and cannot be forced on an unwilling or indifferent parent." (*In re Jonathan R.* (1989) 211 Cal.App.3d. 1214, 1220.) A parent's problems do not excuse him or her from participation in a reunification plan. "[S]ome capacity to achieve the reunification goals is presumed." (*Angela S. v. Superior Court, supra*, 36 Cal.App.4th at p. 762.) Substantial evidence supports the court's finding Kristina did not make substantive progress in reunification services.

DISPOSITION

The petition is denied.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

IRION, J.